

# Understanding the Basics: Expectations and Procedures for Independent Examiners

## Module # 2

### DBHDS Certification Training for Pre-admission Screening Evaluators and Independent Examiners

#### Qualification as Independent Examiner

(Va. Code § 37.2-815)

In order to serve as an independent examiner, an evaluator must meet certain requirements specified in Virginia law.

Professionals who may serve as independent examiners include:

- Psychiatrists and psychologists who
  - Are licensed in Virginia by the Board of Medicine or the Board of Psychology, and
  - Are qualified in the diagnosis of mental illness.
- Clinical social workers, professional counselors, marriage and family therapists, psychiatric nurse practitioners, and clinical nurse specialists who
  - Are licensed in Virginia through the Department of Health Professions,
  - Are qualified in the assessment of mental illness, and
  - Have completed the DBHDS certification program.

Independent examiners must not:

- Be related by blood or marriage to the person evaluated,
- Have responsibility for treating the person,
- Have a financial interest in the admission or treatment of the person,
- Have an investment interest in the facility detaining or admitting the person, and
- Be employed by the facility (except employees of state hospitals, the U.S. Department of Veterans Affairs, and CSBs)

#### Legal Definition of Mental Illness

(Va. Code § 37.2-100)

Virginia law defines mental illness as

- A disorder of thought, mood, emotion, perception, or orientation
- That significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities

And requires care and treatment for the health, safety or recovery of the person, or for the safety of others. In addition, Virginia law concerning emergency custody and civil admissions makes clear that any time “mental illness” is used in that chapter (37.2-800 through 847), mental illness includes substance use.”

## Conducting the Examination

(Va. Code § 37.2-815)

An independent examination of a person subject to a commitment hearing is required by Virginia law. The Court makes arrangements for the examination by an Independent Examiner.

Virginia law also prescribes how the examination is to be conducted and what it must include.

### How the examination must be conducted

- The examination shall be comprehensive,
- It shall be conducted in private,
- It shall be conducted in-person or if that is not practicable, via two-way electronic communication, and
- Translation or interpreter services will be used when necessary.

### What the examination, and subsequent report, must include

- A clinical assessment, including
  - Mental status examination,
  - Determination of current medication (including psychotropic) use,
  - Medical and psychiatric history,
  - Substance use determination,
  - Determination of likelihood that, as a result of mental illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs.
- A review of the temporary detention facility’s records, including
  - Treating physician’s evaluation,
  - Collateral information,
  - Laboratory and toxicology reports,
  - Nurses’ notes,
  - Admission forms,
  - Preadmission screening form
- A substance abuse screening, when indicated
  - A risk assessment that includes an evaluation of the likelihood that, as a result of mental illness, the person will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information
- An assessment of the person’s capacity to consent to treatment, including the ability to
  - Maintain and communicate choice,

- Understand relevant information, and
  - Comprehend the situation and its consequences
- A discussion of the person's treatment preferences as
  - Expressed by the person, or
  - Contained in a recovery support document (e.g., WRAP or AD)
- An assessment of whether the person meets criteria for mandatory outpatient treatment after a period of inpatient treatment
- An assessment of alternatives that are less restrictive than involuntary inpatient hospitalization
- Recommendations for the placement, care, and treatment of the person

### Why should least restrictive alternatives be sought?

- Least restrictive alternatives are Recovery oriented.
  - Less restriction on a person's liberty maximizes the person's rights,
  - Less restrictive alternatives encourage self-determination and empowerment by engaging the person in care rather than forcing the person into care.
  - Less restrictive alternatives instill hope because they demonstrate that treatment in the community is viable.
- Least restrictive alternatives are resource efficient
  - Community-based treatment alternatives avoid the high costs that come with the commitment process and inpatient hospitalization.
  - Refraining from hospitalization when it is not needed allows hospitals to maintain bed availability for those cases in which hospitalization is needed.
- Virginia law requires consideration of least restrictive alternatives.
  - That statute that dictates what must be evaluated by an Independent Examiner explicitly includes "an assessment of whether the person meets the criteria for an order authorizing discharge to mandatory outpatient treatment following a period of inpatient treatment pursuant to" the MOT statute. (§37.2-815)
  - The statute that dictates what a judge or special justice must consider when making a commitment determination includes investigation of least restrictive alternatives. Specifically, the law requires that the preadmission report submit by the CSB to the Court must state "whether there is no less restrictive alternative to inpatient treatment." (§37.2-816)
  - The judge or special justice must then find that "all available less restrictive treatment alternatives to involuntary inpatient treatment...have been investigated and determined to be inappropriate" before the judge or special justice can order the person to involuntary commitment. (§37.2-817)

### **The Independent Examiner's Role in the Civil Commitment Hearing**

(Va. Code § 37.2-815)

The Independent Examiner must provide a written report to the Court before the hearing.

- The report shall
  - Certify that she personally evaluated the person, and
  - State whether she has probable cause to believe the person meets commitment criteria

An Independent Examiner may or may not be required to attend the commitment hearing

- The written report may be accepted into evidence, in which case the examiner does not need to attend the hearing.
- The person or the person's attorney may object to the admission of the report, in which case the examiner must attend in-person or by electronic communication.
- The examiner shall not be excluded from the hearing pursuant to a witness sequestration order.